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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,459	09/29/2003	Jason A. Barba	8902.01	6656
37833	7590	09/07/2005	EXAMINER	
LITMAN LAW OFFICES, LTD PO BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

HC

Office Action Summary

13

Application No.

10/671,459

Applicant(s)

BARBA, JASON A.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005 and 29 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tamasaki (JP '759), in view of Mederer (EP '841) and Neuhauser (FR. '593), or vice versa, i.e., Mederer and Neuhauser in view of Tamasaki, both further in view of Manoski ('511), Heppe ('369), Mueller ('861), Renner ('529), Eales ('502), Josephson (D '277), Harris et al (D '859), Bernat (EP '733), Gardner ('077), Oprean ('851), DeVillars (GB '303), Sisco (D '782) and Swiss Colony Christmas Book (1982), further in view of Burt ('324), Burt ('997) and Musher ('700), for the reasons fully and clearly detailed in the Office actions mailed 7/16/04 and 1/31/05.

It is first noted that the question raised in the last Office action relative to support for the phrase "inedible carrier" has been withdrawn in view of applicant's comments filed 5/31/05.

All of applicant's remarks relative to the rejection on art, filed 5/31/05, have been fully and carefully considered, but are not found to be convincing, essentially for the reasons given in the last two Office actions. On page 8 of the amendment, it is urged that claim 17 recites that the hard candy has the shape of a human skull. Claim 17 is silent in this regard. In fact, most of the claims do not recite a skull and only by inference can it be argued that a few claims may recite a human skull. Thus, applicant is urging limitations not found in the claims. Similarly, applicant urges that claim 36 recites a

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thumb, but claim 36 does not recite a thumb. However, even if the claims were specific to applicant's urgings, as noted previously, the claims would still not be patentable. This is because the art taken as a whole is replete with examples of both single and composite food products, including candy products, wherein the single or composite foods, including candies, are selected to represent, in simulation, both in appearance, color, and texture, real life or recognizable, three dimensional articles, objects or living creatures. Thus, once it was known in the art to shape and color foods to produce these simulations, taken with the fact it was known to simulate a chicken leg's flesh and bone, the particular recognizable object one chooses to represent is seen to have been an obvious matter of choice and/or design in view of the art taken as a whole. On page 9 of the amendment, it appears that it is being urged that Tomasaki does not teach providing an inedible carrier. Tomasaki is not being relied on to teach an inedible carrier, nor is Tomasaki being applied alone. As noted previously, the art taken as a whole is replete with teachings of combining a composite food with an inedible handle. To provide the composite food with an inedible handle for its art recognizes and applicant's intended function, that is a handle, so one can manipulate the food without touching the food, is seen to have been obvious in view of the art taken as a whole. On page 10 of the response, it is urged that Bernat disposes the support stick in the outer layer. The urging argues each reference separately as if they were applied in a vacuum. The references are applied together under 35USC103, obviousness, and not 35USC102, anticipation. As clearly pointed out in the last Office action, Eales, Oprean, Burt('324), Burt ('997), and Musher can all be relied on to teach it was notoriously well known to

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provide composite foods including confections with a support stick wherein the support stick is coupled to the core of the composite. To add a conventional support stick to the combination for its art recognized and applicant's intended function is therefore seen to have been obvious. Finally, it is urged that the hidden portion of the recited composite provides a delightful and surprise effect. This urging too is directed to limitations not found in the claims since it is not clear from the claims how hidden the inner layer is. In any case, references such as Manoski et al can be relied on as evidence to show that it was conventional to provide a composite, food simulation, simulating three dimensional, recognizable objects wherein the composite provides a delightful and surprise effect upon seeing the hidden internal layer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761